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ABSTRACT

Designed as a guide for law professionals involved in school guest presentations, the materials in this handbook are also useful to elementary and secondary teachers interested in incorporating law-related education into the course content. Part 1 defines law-related education and offers suggestions for introducing law-related issues at different academic levels. Part 2 presents strategies for teaching the following aspects of the law: fairness and rules, law awareness, the lawmaking process, law interpretation, housing law, consumer law, and search and seizure laws. Each teaching strategy revolves around a particular activity such as a game, a mock trial, role play, or case study, and includes hand-outs, discussion questions, and follow-up suggestions. A list of tips for classroom effectiveness is presented in part 3. Two appendices contain information and resources for conducting mock trials and case studies. An annotated list of materials on the Bill of Rights concludes the handbook. (LP)

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Law-Related Education

The Legal and Law Enforcement Professional: Ideas for Involvement

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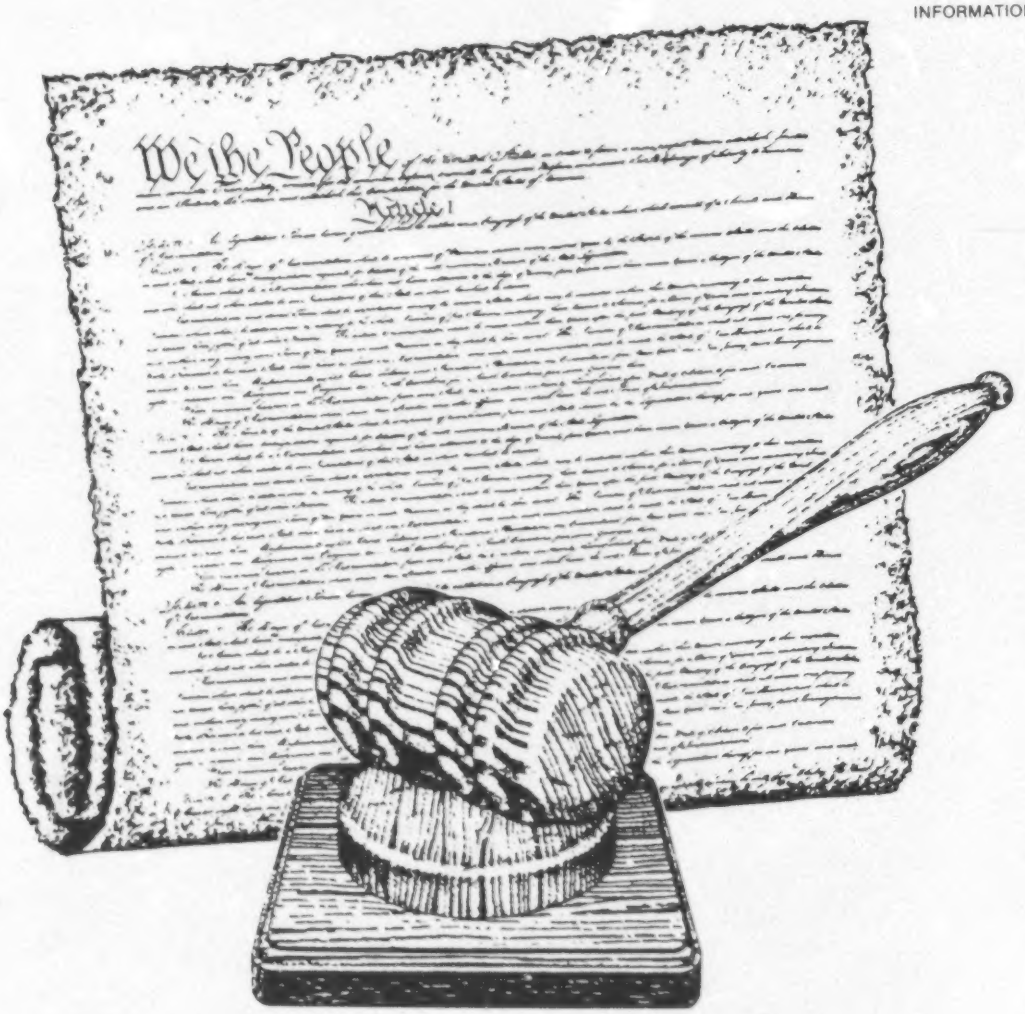

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I. Getting Involved in Law-Related Education

What is Law-Related Education?

In general, law-related education can be described as organized learning experiences that provide students and educators with opportunities to develop the knowledge, understanding, skills, attitudes and appreciation necessary to respond effectively to the law and legal issues in our complex and changing society. As a professional in the field, your input and knowledge can vitally expand learning opportunities at every grade level.

Approaches in Law-Related Education

There are three main approaches to educating students about the law. One approach focuses on laws that affect the daily lives of all people, such as criminal law, juvenile law, consumer law, landlord-tenant law, family law or environmental law. Another approach is concerned mainly with the conceptual bases of law, such as ideas on liberty, justice, equality, property, power, authority, privacy and responsibility. A third approach is built around student involvement in the criminal justice system or the legislative process. This booklet will provide you with methods to become involved in all three approaches.

Making Law-Related Education A Meaningful Experience for Students

Regardless of the approach selected for teaching students about the law, the methods used in the classroom to make law-related education a meaningful experience for students are essentially:

Involvement of students in moral reasoning and ethical analysis through continued practice in reaching moral decisions and justifying them.

Setting the stage for learning about law through the use of activities, films, simulations, field trips, observations, applications, questions, readings, etc. provided by the teacher.

Legal input from a legal or law enforcement professional such as a lawyer, judge or policeman, that complements the learning situation created by the teacher.

The substantive input of the legal or law enforcement professional is most effective when it is in response to questions students ask, is related to areas of students' interest or experience, or is developed around an activity or learning experience in which the students are engaged.

It is very important that teachers and legal or law enforcement professionals communicate precisely regarding topics, nature of presentation desired, age group to be addressed, prior information students have on the topic, materials available, length of desired presentation, time, place, etc.

Getting Started

Be aware that you can be effectively involved without necessarily sacrificing great amounts of time. Remember, law-related education is based on the dual assumption that (a) the teacher should set the stage for your interaction with students, and (b) a short interaction between the professional and student can be very contributive when it is geared to the interest and needs of the student.

As a first step, you could contact your local school administrators. Tell them of your interest in providing assistance in a law-related education program. If the school administrator indicates an interest in law-related education, you can ask to meet with teachers interested in your input in their classrooms. Copies of law-related education materials or assistance from a DPI or Center for Law-Related Education staff person can be provided for this meeting if you wish.

In talking with teachers, discuss procedures for obtaining your services, the type of services that can be provided by you and other members of your local bar association or law enforcement agency, and any information you need to function effectively.

You may also wish to coordinate the type of services you can provide with other professionals from your association or agency. Communicate this information with a local administrator or teacher. One option for involvement you may choose would be to join with other colleagues from your association or agency to offer short seminars on law to administrators and teachers.

Arrangements can be made for a member of the staff of the Iowa Center for Law-Related Education to talk to your local association or agency pertaining to the law-related education program.

Specific Ways to Become Involved in the Classroom

At the Elementary Level

1. **Answer** questions students are asking about the law. Ask the teacher to provide you with a list of questions before your presentation. Other questions will arise spontaneously as kids get the hang of it.
2. **Work** with the teacher and students in setting up a mock trial. Your role would include talking to students about a court, how it is organized, what it attempts to do, who uses the courts, the roles of the judge, attorneys, jury, clerk, etc. Assist students with the roles they assume in the mock trial, *but do not try to be too sophisticated at this level.* Help students understand the jury system, how it functions, why it is important, and how jurors are selected. Let the students play their roles. It is very helpful to have a professional present during the mock trial to respond to questions that arise. See page 20 for instructions on a mock trial.
3. **Escort** the students on a court tour or neighborhood walk. During a court tour, briefly explain to students some things they may look for in the court. Debrief them after the tour, and answer their questions. On a neighborhood walk, point out aspects of law such as street signs, litter, use of vehicles, or results of vandalism.
4. **View** a law-related film with students. Answer questions that may arise from the film, or stimulate thinking with questions of your own. (Ask the teacher to review the film with you before your class visit.) Remember, films at the elementary level are not very substantive, but rather deal with issues of fairness, justice, and the need for laws.
5. **Do** a simple activity with students, such as the one described on page 6. Remember, an activity should only serve to open the door to more substantive understandings of the law.
6. **Talk** to students about law-related activities in the news. Use this as a base for talking about the legal system.

At the Middle School and High School Levels

All the suggestions listed for use at the elementary level can be adapted for middle school and high school by changing the substance of questions asked of students, and the responses to questions asked by students. In addition, the case study approach is an excellent technique at this grade level. See the article by Isidore Starr on page 26.

Publications suggesting numerous take-off activities for the legal and law enforcement professional and teachers may be obtained from the Iowa Center for Law-Related Education.

II. Teaching Strategies

Teaching Strategy 1 - Introduction to Law

THE RING GAME

Purpose

To teach the purpose and necessity of rules. Helps develop a definition for law, as well as some basic ideas as to fairness (i.e., the need for notice and the problems of discrimination.)

Method

a. Enter the room and announce that the class will begin its study of *Law* by playing a game. This usually elicits some positive feedback from the students.

b. Give several rings (or paperclips, bottle caps, pencils, etc.) to the first student in each row. When each row has an equal supply of materials, tell the students to begin playing.

c. Obviously, the students are confused by the lack of direction and shortly several may become quite upset or confused. After a minute or so, give in to their demands and "explain" the game, telling the students to pass the clips to the back of the row and then back to the front, one at a time. The first team to finish wins.

d. Start the students and then quickly stop them. Tell them they forgot to pass the clips over their left shoulders only. To this, they complain of never having been told of this rule. Don't respond to their complaints.

e. The rings or clips come back to the front and they start again, this time to be stopped because one of the rows has more (or fewer) boys (or girls). Because of this "reason," that row will have to pass two extra rings back and forth in order to win.

f. Now the game begins again and is allowed to conclude.

g. When the "winners" are announced, most of the remaining students are likely to be angry about the way the game was run. This anger is the basis for the discussion which follows.

Discussion

The following questions can serve as a beginning: "What made you angry about the way the game was played? Why was it unfair?" In the responses, three key elements need emphasis:

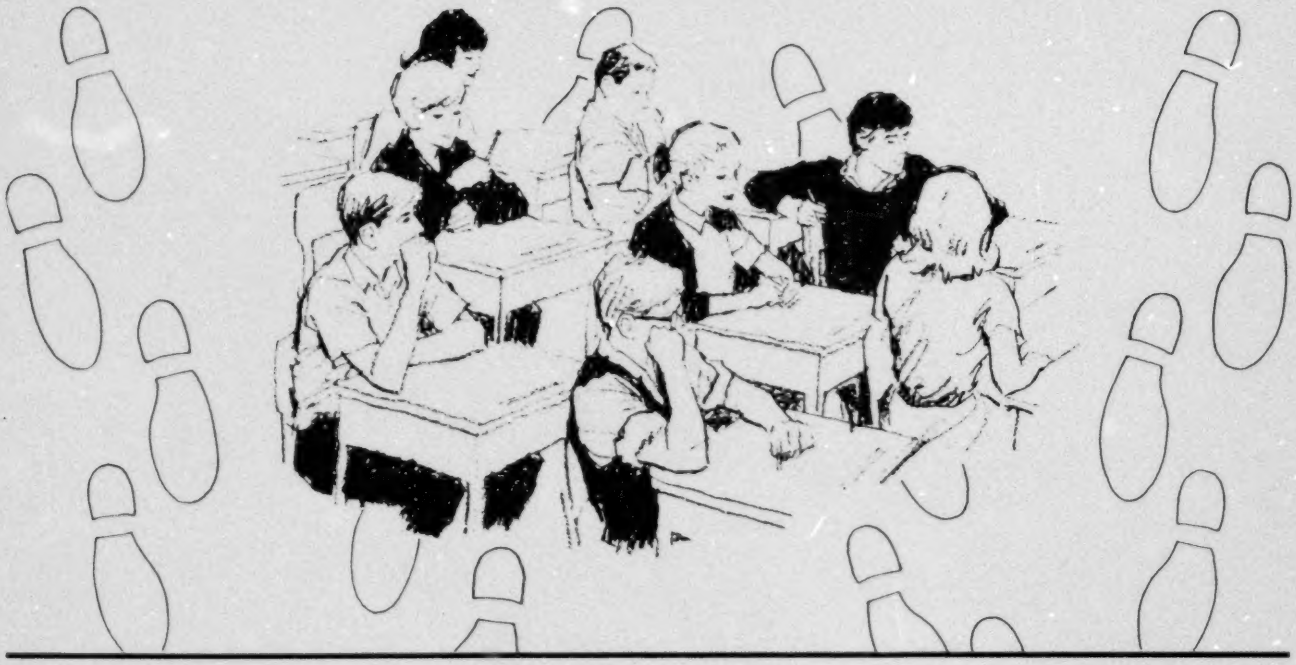
1. A game can't be enjoyed without a clear and consistent set of rules announced to all participants before it begins;

2. The rules can't be changed in the middle of the game without feelings being hurt; and

3. Certain groups or individuals can't be discriminated against arbitrarily.

Ask the class to try to see the relationship between the rules of "The Ring Game" and society's laws. One way to do this is to ask: "Why would a course in the law start off with a game like this?"

Before leaving the game completely, try to develop a definition for law based on the class experience in the game. ("The set of rules a group or community uses to regulate the conduct of the people within it.")



Teaching Strategy 2 - Awareness of Law

MIND WALK

Purpose

May be used to introduce law studies in the classroom, and to illustrate the pervasiveness of law, that law is both civil and criminal, and the positive nature of law (i.e., most laws are protective not punitive).

Materials

The attached handout may be used if desired.

Method

Describe a typical activity in everyday life or tell a story about some incident or event. Tell students to stop the story any time they feel law affects the particular activity. If a student feels law does affect the activity, ask how.

Example

My name is John Smith. I live at 1014 Wilson Boulevard. This morning I awoke at 7:00 a.m. I arose, washed my face, dressed, ate breakfast, read the paper and drove to my job here at school.

Discussion

The first time through the story the students may not see many things with legal impact. At this point a few questions might help: "How are time zones established? Are there any laws regarding the wearing of clothes or their sale or manufacture? What about laws affecting a free press and holding a job?"

Followup

This activity can serve as a good pre-test or post-test. Given at both the beginning and end of a unit it can illustrate students' changed awareness about the pervasive nature of law.

HANDOUT

Mind Walk Activities

Next to every daily activity, please make the following notations:

Place an "X" in either the "Yes" or "No" spaces if you feel that the law (as you understand that term) does or does not affect that particular activity. If your response is "yes," complete the next blank spaces by stating *how* the law affects the activity.

Any Legal Impact?

Activity	YES	NO	How?
1. Wake up, turn on light			
2. Wash your face			
3. Get dressed			
4. Eat breakfast			
5. Read the paper and see ad for furniture sale (you're thinking about buying a sofa)			
6. Get in your car			
7. Drive to school			
8. Buy lunch in cafeteria			
9. Stop in furniture store advertised and purchase a sofa on credit			
10. Pick up your pay-check, go to bank, and deposit part of the check			
11. Stop at supermarket, buy: roast, canned fruit and vegetables, milk			
12. Pick up prescription at pharmacy			
13. Stop at Sears and charge a sweater			

10

Activity	Any Legal Impact? YES	NO	How?
14. Go home, and discover you have no heat. Call your landlord			
15. Turn on the TV while you make dinner			
16. Eat dinner			
17. After dinner, a salesman appears at your door selling encyclopedias. You don't buy them.			
18. While the salesman is making his pitch, you become so distracted that you drop a cigarette ash on your carpet and burn a hole in it			
19. Your landlord drops by to explain that the pipes in the basement burst, but water and heat should be restored within the hour			
20. While the landlord is present, you pay him your rent			
21. Watch more TV			
22. Take a bath, wash your hair			
23. Turn out the lights and go to bed			

Teaching Strategy 3 - Lawmaking

THERE OUGHT TO BE A LAW

Purpose

"There ought to be a law . . ." How many times has each of us uttered or thought these words? This phrase has almost become an American folk-saying like "You can't fight city hall!" It is used most often by angry citizens upset over some situation, condition, or practice which they feel could be remedied if only there were a law on the books to deal with it. Any new law must start as an idea.

Method

a. Write the phrase "There ought to be a law . . ." on the chalkboard and then ask the students to complete the sentence by volunteering ideas about their own particular concerns. For example, there ought to be a law . . .

. . . banning beverages sold in non-returnable bottles
. . . requiring a traffic signal at the corner of Main and Church Streets
. . . lowering the mandatory school attendance age from 16 to 14
. . . requiring jury trials for juvenile criminal cases.
. . . etc., etc.

b. Then select several of the suggested subjects for new legislation and divide the class into groups assigned to draft the proposed laws. Make sure that the student who proposed a particular law is one of those in the group assigned to write it. Give them 15-30 minutes to do this.

Note: Urge the students to be as precise as possible in the language they use in writing the laws. The wording should clearly define the law's *rule* (purpose, scope, limits) as well as its *enforcement apparatus*, so that ambiguities and interpretation problems can be minimized. They will probably find it difficult to frame a law that is both general in nature yet not open to a wide variety of interpretations.

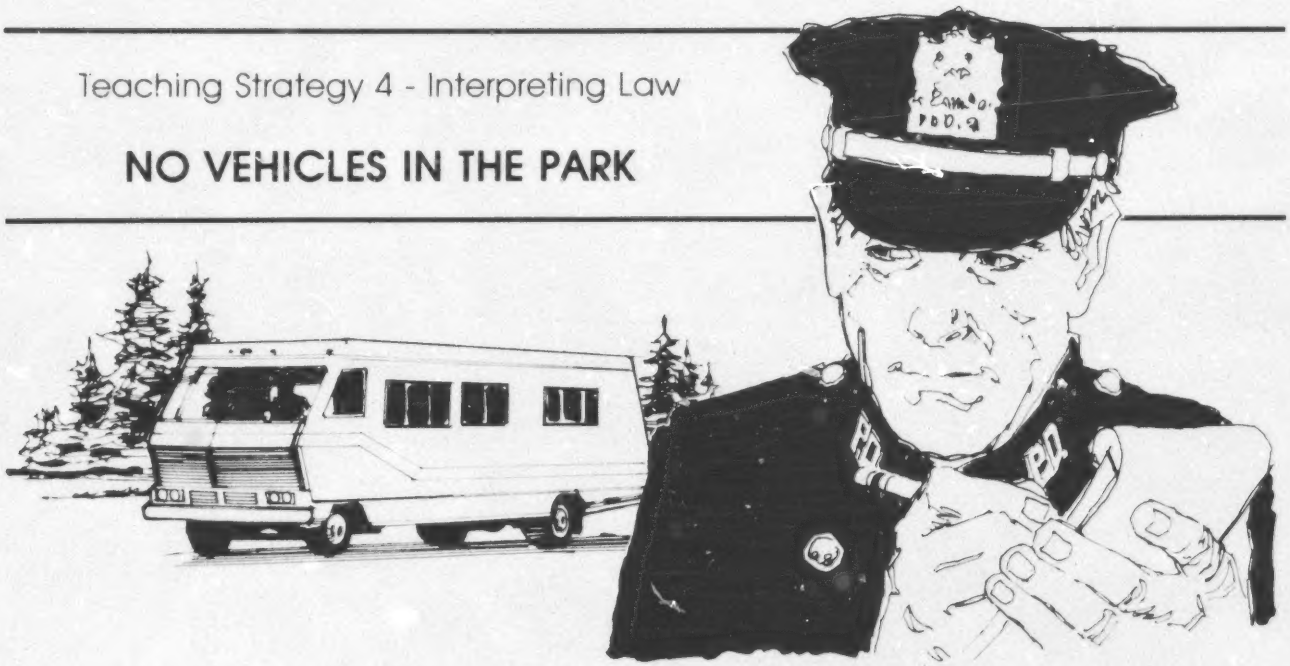
c. Conclude the lesson by having each group read its drafted law to the class, and then discuss strengths and weaknesses of the law as written.

Discussion

In looking at the proposed law, have the students recognize possible conflicts with existing state or federal law, infringements on the rights of others, and legislation already dealing with parts of the proposal. This particular aspect can lead to an interesting discussion as well as some research into the above conflict areas. Many times people are not aware that there are particular laws already on the books and it is just a question of possible lack of enforcement.

Teaching Strategy 4 - Interpreting Law

NO VEHICLES IN THE PARK



Purpose

Small group discussion stimulator on statutory construction, and reading and writing of laws. Illustrates how laws, once written, may be susceptible to different interpretations.

Provides students with an opportunity to interpret a law based on the letter of the law, the intent of the lawmakers, and their own sense of values.

Gives students an opportunity to work together in groups to identify and solve a legal problem.

Simulates the type of cooperative work environment in which attorneys, law-related personnel, and citizen groups often operate.

Materials

The handout—"No Vehicles in the Park"—includes a statement of the law, a very brief legislative history of the law, and a series of cases in which disputes have arisen over the proper interpretation of the law.

Method

Distribute the handout to each member of the class. When students have read the basic law, have them move into small groups of three to five students each. Ask each group to decide whether or not the vehicles described in the case studies should be allowed in the park. Tell each group that it will be expected to give reasons for each of its answers. Groups may wish to appoint one spokesperson for the entire exercise or may wish to have a different spokesperson provide the answer and accompanying rationale for each case study.

The groups will need about 10 to 15 minutes to arrive at decisions for the cases. During this time (once the instructor has quickly checked to make sure that each group is functioning properly), a grid should be drawn on the board in order to record the responses. The grid should list the case numbers along one axis and the group numbers along the other.

When the groups have arrived at their answers, the class should debrief. The instructor records responses for each case, group by group, in the grid, and asks for the rationale of the decision-makers where appropriate.

Discussion

Ask students whether the law can be redrafted to avoid the inconsistencies which now plague it. Should laws be written in detail so that citizens can predict accurately what they mean? Should they be *flexible* so that they can be adapted to meet changing situations? Can they be both?

How should "emergency" situations be provided for in the law? Who should determine what constitutes an emergency?

What is an appropriate penalty for violation of this law? Should that be included in the law? Who should enforce the law? Is there any remedy available to citizens if the enforcers of the law break the law?

Follow-up

Students sometimes decide that exceptions to the law should be permitted if a person first applies for a "special permit." Have the class role play a situation in which a special permit is applied for.

Hold a mock trial to further explore one of the case studies from the problem which provoked considerable disagreement.

Invite a local legislator to visit the class to amplify on the problems involved in the legislative process.

HANDOUT

No Vehicles in the Park

The town of Beautifica has established a lovely park in the city. The city council wished to preserve some elements of nature, undisturbed by city noise, traffic, pollution and crowding. It is a place where citizens can go and find grass, trees, flowers and quiet. In addition, there are playgrounds and picnic areas. At all entrances to the park the following sign has been posted:

"NO VEHICLES IN THE PARK"

The law seems clear but some disputes have arisen over the *interpretation* of the law. Interpret the law in the attached cases keeping in mind the *letter* of the law as well as the *intent* of the law.

1. John Smith lives on one side of the town and works on the other side. He will save 10 minutes if he drives through the park.

2. There are many trash barrels in the park so that people may deposit all litter there, thereby keeping the park clean. The sanitation department wants to go in to collect the trash.

3. Two police cars are chasing a suspected bank robber. If one cuts through the park, it can get in front of the suspect car and trap it between the patrol cars.

4. An ambulance has a dying car accident victim in it and is racing to the hospital. The shortest route is through the park.

5. Some of the children who visit the park want to ride their bicycles there.

6. Mrs. Thomas wants to take her baby to the park in his baby buggy.

7. A monument to the town's citizens who died in the Vietnam War is being constructed. A tank, donated by the government, is to be placed beside the monument.

KLINE CASE STUDY

Purpose

To teach students basic principles of landlord/tenant law, and to foster critical thinking skills by analyzing a case study.

Materials

Use attached handout.

Method

Distribute handouts to each member of the class. When they have read the handout, have them form small groups of three to five students each. Ask the groups to analyze the two possible decisions the court can make, and determine which decision they agree with most and why.

Discussion

Have each group present their selection to the class, explaining the reasons why they chose that answer.

HANDOUT

Kline Case Study

When Sara Kline moved into an apartment house in a city about seven years ago, there was a doorman, an employee who sat at the desk in the lobby. Then, the front door of the building was locked after 9:00 p.m. every night. However, her written lease said nothing about the landlord providing security measures. In recent years, a number of tenants have been attacked in the apartment building's hallways. One night about 10:00 p.m., Mrs. Kline was mugged in the hallway of the building and suffered serious injuries. She filed suit against the landlord.

Assume this case went to trial. Below are two possible decisions for the court to make. Which one do you most agree with and why?

Opinion No. 1

This court does not believe that a landlord is under a duty to provide police protection in his or her apartment house unless it is specifically promised in the lease. In this case, the lease states nothing about security or safety being provided by the landlord. To require a landlord to provide what is *not in the lease* would be not only unfair but also very expensive.

Though there is a duty imposed on landlords to make repairs and maintain common hallways and entranceways, this duty is to protect tenants from being injured directly by the landlord's failure to repair items such as a broken step or handrail; it cannot require landlords to be responsible *for outside forces* such as criminals over whom landlords have no control.

If Mrs. Kline was unhappy about the change in services in the building which occurred since she moved in or the increased crime in the neighborhood, *she was free to move out* and find *another apartment which had better security.* As she had a month to month lease, she could have moved out by giving the landlord just 30 days notice.

Opinion No. 2

Though the courts have usually ruled that landlords are under no duty to provide security for tenants, this court believes that in an *urban multiple dwelling apartment* building, in a high crime area, *implied into every lease is a duty* of the landlord to take *reasonable steps to provide protection* for tenants.

Today's modern urban apartment building is different because there is no way *the individual tenant* can provide protection in all the hallways. These are under the landlord's control and he has a duty to act reasonably in keeping them safe. In this case, the *landlord knew that crimes* had been committed in the building and *still did nothing.*

In addition, the tenant had come to expect a doorman, an employee at the desk in the lobby, and the front door of the building *locked at 9:00 p.m. every night.* These were the conditions when she moved in and therefore it was *the landlord's duty to maintain* this same degree of security all during her lease.

Teaching Strategy 6 - Consumer Law

WRITING EFFECTIVE LETTERS

Purpose

To teach students basic principles of consumer law, and to teach them to write effective letters dealing with legal situations.

Materials

Use attached handout.

Method

Distribute handouts to each member of the class. Have the students answer the questions on the handout either individually or in small groups.

Discussion

Have each student or group read their letter to the class. Go over the language of each letter to analyze its effectiveness. Ask the class to criticize the letters to improve their effectiveness.

Follow-up

1. Assume that there has been no response to Terry's letter. Role play the follow-up phone call from Terry to the person to whom the letter was mailed. Have that person contend that he or she never received the letter.
2. Simulate a small claims court trial based on these facts. At trial, discuss issues involving the implied warranty of merchantability and any possible disclaimers.
3. Ask students to relate personal experiences which they or their families have had with such sellers. Did they get relief by contacting the seller, the manufacturer, a consumer help agency, by going to court, etc., or did they fail to get relief?
4. Study the newspaper ads of stores selling televisions and other major appliances. Do they contain any legally enforceable promises?
5. Develop with your students a check list for use in writing letters to sellers.
6. Invite persons who work in consumer help organizations to visit your classroom. Ask them to discuss the kinds of letters they have found to be most successful.

HANDOUT

Writing Effective Letters

Factual Situation

Terry Tubeman purchased a major brand name (BTR) 21-inch color television set from Tally's Radio and TV Shop. He paid $435 for the set, which came with a manufacturer's 90-day warranty on the picture tube. Tally's made no warranties as to the set. The manufacturer's warranty covered replacement of the picture tube but not any labor charges or other parts.

Several months after Terry purchased the set, he lost vertical control of the picture. Soon thereafter, the entire picture became blurred. A repairperson told Terry that a new tube was needed. The cost of the tube would be $225, and installation charges would add $40 more.

Terry returned to the TV Shop on January 8 and spoke with Mr. Foxx, the salesperson who had sold him the set. Although Terry had misplaced the dated sales receipt, he was certain he had purchased the set during the second week of September. The salesperson explained that the store had made no warranties as to the set and could not help him. Terry argued that an expensive color television of ordinary quality should not lose its picture in less than four months and demanded to see Tally, the store owner. Foxx told him that she was on vacation.

TO WHOM SHOULD TERRY WRITE ABOUT HIS PROBLEM?

WHAT SHOULD HIS LETTER SAY?

DRAFT A LETTER FOR HIM.

Teaching Strategy 7 - Consumer Law

CONTRACT GAME

Purpose

To teach students basic principles of contract law, and to foster critical thinking skills about the commitment of contracts.

Method

Use this outline to teach the class about contract law.

Lesson I

Concepts: A contract is a written agreement; a consumer should never sign anything that he or she does not understand.

Activities: Fold a piece of paper in half. Put the following inside: "I owe $1.00 (your name and date)." Ask a student to write his or her name quickly without giving the student a chance to look inside. After the signing process, show the class that the student must pay you.

Discuss: What are the problems of signing a paper, which is a legal contract?

Lesson II

Concepts: People should be aware that one seldom gets "something for nothing." A consumer should be aware of items that are sold at ridiculously low prices. A consumer should get all promises in writing.

Activities: Write on a piece of paper: "The person who signs this paper will receive a pen for one cent." Let the student read the contract, and ask him or her to sign it. After the student signs his or her name and pays you one cent, give the student the pen with the refill cartridge removed.

Discuss:

1. What did the buyer of the pen do wrong?
2. Why is it important to check an item to see if it works before you sign your name to buy it?
3. Does the paper say that you will receive the entire pen?
4. Why did you expect to get a perfect pen for only one cent?
5. Do some things sound just too good to be true?
6. Why would someone sell something very cheaply?

Lesson III

Concepts: A typical state law requires that a contract for installment buying (buying on time) must read in bold type that (a) the buyer has thoroughly read the contract; (b) the buyer will take a copy of the contract home with him; and (c) that the contract should have no blank spaces.

Activities: Write the three concepts above on the blackboard. Brainstorm with students why these points should be included in a contract.

ARREST AND SEARCH ROLE PLAY

Purpose

Under the Fourth Amendment to the Constitution, citizens are protected against unreasonable searches and seizures. However, the precise police practices which fall within this reasonableness standard have long tormented our courts.

In the following role play, students, participating as a police informant, the two arresting police officers, and the accused, are presented with an opportunity to explore arrest and search law in a concrete, factual context. They gain an insider's perspective on the problems the police face in making split-second decisions regarding their own safety and the preservation of evidence necessary to the prosecution in a subsequent trial. In addition, the class is confronted with the alternatives facing a citizen who wishes to assert his rights in an arrest and search situation.

Method

Participants:

1. Fingers McGee, the informant
2. Police Officer Jones
3. Police Officer Smith
4. Bill Johanson, the accused

The Role Play

Part I:

At a street corner meeting, police officers Jones and Smith are told by Fingers McGee, who has been a reliable informant in the past, that just 20 minutes earlier he saw a six foot tall white male who "looked like" Bill Johanson, whom the police don't know, being chased down the block by the owner of the Dixie Liquor Store. McGee says that Johanson had been carrying a sack and a knife and was probably headed toward his home some two blocks away (apartment number given). McGee also tells the police officers that he knows that Johanson is a drug addict.

Role play this street encounter.

Part II:

About 10 minutes before their encounter with McGee, Jones and Smith had received a police radio report indicating that a robbery had taken place at Dixie Liquors. The report noted that a white male, about six feet tall, had committed the crime according to a statement given to police by the store owner.

Jones and Smith, deciding to pursue McGee's tip, go to Bill Johanson's house. When they arrive, they will find him sitting at a desk, nodding and obviously on drugs.

Role play this arrest and search situation. (Before this portion of the role play, the two police officers should be given a few moments to confer as to the strategy they will use in the arrest. The following items should be in Johanson's home: a gun in the desk drawer; a knife on the desk in plain view of the police; a sack full of money in the far corner of the room; and a small package of heroin in Johanson's shirt pocket.)

Discussion

1. Did the police officers have enough information from their encounter with McGee to arrest Johanson? To investigate further?
2. Did the police officers have enough information between the tip and the police radio report to arrest Johanson? Was the fact that Johanson was nodding when they found him of any significance?
3. Would the answers to the above questions be any different if the police had never met or heard of McGee before the street encounter?
4. Before entering Johanson's house, should the police have announced their purpose and authority? Does this situation fall within an exception to that general rule governing police conduct? Should it?
5. At what point did the officers have the probable cause necessary to arrest Johanson? Could they have frisked him *before* they arrested him?
6. At what point should the police have read Johanson the Miranda warnings?
7. Could the police have seized any evidence *before* putting Johanson under arrest?
8. How thoroughly could the police have searched Johanson's person and home *after* putting him under arrest?
9. Once arrested, where should the police have taken Johanson?
10. How might Johanson have best protected his rights in this situation?

Classroom Tips

As a legal or law enforcement professional, your involvement is most effective if . . . .

. . . Your participation is integrated into a law-related learning situation the teacher has set up or stimulated

. . . Your involvement is built around an activity or questions students have asked or may ask

. . . Your remarks are geared to the interest level and understanding of the students

. . . During lectures, you seek a high level of student involvement through questions or activities

. . . You communicate clearly with the teacher regarding the following items:

- Exactly what does the teacher want you to accomplish?
- What background and preparation do the students now have in the topic you are to discuss?
- What specific interests do students have regarding the topic you are to discuss?
- What approaches does the teacher recommend?
- Will the teacher create or set up the learning situation with an activity, film, field trip, etc.?
- What materials and resources does the teacher suggest?
- How many students? What ages? Unusual situations? Classroom arrangement? The time? The place?
- How much time will you have for the presentation?
- What are some questions students have regarding the topic you are to discuss?

Appendix A

From Classroom to Courtroom: The Mock Trial

Perry Mason move over—students throughout the country are waging exciting courtroom battles and learning about law and legal processes at the same time

by Lee Arbetman and Ed O'Brien

Across the country, exercises are going on that look like trials, that deal with real facts and common situations, that feature judges, lawyers, witnesses and jurors. Everything is as realistic as possible—except that the participants are youngsters who are learning about law and the legal system through a simulation known as the mock trial.

In many mock trials, students playing lawyers do so well that they could almost pass for the real thing. Judge Harold Greene, a District of Columbia jurist who has presided at many mock trials, says that some high school students perform better in these exercises than do attorneys in his courtroom. In other simulations, students playing lawyers work under the same constraints as real lawyers—having, for example, no more than 30 minutes to prepare for trial—and still manage a creditable job.

Why is it that the trial—something which for years was considered solely the province of the legal profession—is suddenly becoming a popularly accepted educational experience for non-lawyers?

Part of the mock trial's appeal lies in the fun involved in preparing for and participating in the simulated trial. Who doesn't want to become—if only for a brief time—a Perry Mason or a distinguished judge or the aggrieved plaintiff demanding justice? While television depiction of trials often distorts the reality of legal procedures, the courtroom drama which comes into our living rooms several times each week surely heightens the mock trial experience for students.

Rationale for Mock Trials

Mock trials are more than fun, however; they're first and foremost invaluable learning experiences. Participation in and analysis of mock trials provides students with an insider's perspective from which to learn about courtroom procedures. Mock trials help students gain a basic understanding of the legal mechanism through which society chooses to resolve many of its disputes. And while obtaining this knowledge, students develop useful questioning, critical thinking, and oral advocacy skills, as well as significant insight into the area of law in question.

Participation in mock trials can help students better understand the roles which the various actors play in the justice system, including the difficult conflicts those persons must resolve daily in performing their jobs. On a more complex level, it is an excellent vehicle for the study of fundamental law-related concepts such as authority and fairness.

The mock trial also provides a natural opportunity to incorporate field experiences and community resource persons into the law-related curriculum. Visits to local courts either prior to or after classroom mock trials will make the activity a more meaningful learning experience. Inviting judges, attorneys and law students to take part in mock trials not only helps students bridge the gap between simulated activity and reality but also gives them more empathy for these resource persons and enables them to ask thoughtful and direct questions—and it gives the resource people a natural vehicle for sharing their knowledge and experience. Finally, mock trials will give students some practical knowledge about courts and trials which can be invaluable should they ever be witnesses in a real trial or principals in a legal action.

Types of Mock Trials

The mock trial begins where actual trials begin—with a conflict or dispute which the parties have been unable to resolve on their own. Mock trials may draw upon historical events, trials of contemporary interest, school and/or classroom situations, or hypothetical fact patterns. Most mock trials use some general rules of evidence and procedure, an explanation of the basic facts, and brief statements for each witness (see box for a sample criminal law mock trial from the Street Law curriculum). Other mock trial formats range from free-wheeling activities where rules are created by the student participants (sometimes on the spot) and no scripts are used, to serious attempts to simulate the trial process based on simplified rules of evidence and procedure, to dramatic reenactments of historical trials in which scripts are heavily relied upon.

The format chosen depends, of course, upon the objectives which the teacher has established for the activity. But regardless of how mock trials are used, teachers often feel that training would help them feel

more comfortable with this strategy in the classroom. For this reason a number of law-related teacher training programs have included mock trials in their courses or summer institutes. Many teacher education programs are described in the ABA's *Teaching Teachers About Law: A Guide to Law-Related Teacher Education Programs* (available for $2.00), and a complete list of summer teacher education programs is provided free of charge by the ABA each spring. (Write YEFC, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.) Training sessions provided by these programs explore the rationale for using mock trials in the classroom, explain simplified rules of evidence and procedure, and offer teachers an opportunity to prepare for and "walk-through" a mock trial under the supervision of group leaders.

Not surprisingly, when law students are involved in law-related programs, the mock trial is frequently used. In this format, the teacher doesn't have to locate additional community resources: law students have an excellent learning experience as they teach trial procedure to high school students; and high school students benefit from being exposed to knowledgeable resource people who happen to be close to them in age. We have information on law student programs around the country. Please write us at the address listed at the end of the article.

Training and community resources are a big help, but they're not essential. You can still begin to conduct mock trials with your students by following the basic steps we've outlined here and by doing further reading or becoming familiar with some of the commercially-prepared materials on the market. (See the bibliography for some suggested resources.)

How to Prepare for and Conduct Mock Trials in the Classroom

After teaching about the purpose of trials and the procedure involved, we suggest the following:

a) Distribute mock trial materials to the students. The facts and basic law involved should be discussed with the entire class. Teachers may develop fact patterns and witness statements (e.g., brief summaries of each witness' testimony), have students develop them, or use already published trial materials.

b) Try to match the trial to the skills and sophistication of your students. For example, if your students are unfamiliar with mock trials, you probably should begin with a simple exercise like the one we've provided, *State v. Randall*. This case is based on a minor altercation, and it's very unlikely that an incident of this sort would actually go to trial, but that doesn't make it any less valuable as a learning device. Remember that the aim of mock trials isn't always to imitate reality, but rather to create a learning experience for students. Just as those learning piano begin with simple exercises, so those learning mock trials can begin simply and work up to cases which more closely approach the drama and substantive dimensions of the real thing.

c) Students should be selected to play attorneys and witnesses, and then groups formed to assist each witness and attorney prepare for trial. For example, *State v. Randall* could easily involve the entire class. The tasks for the prosecution team, in order of presentation at the trial are: opening statement, direct examination of James, direct examination of Arlene, cross-examination of Phillip, cross-examination of Randall, and the closing statement. Tasks for the defense team are: opening statement, cross-examination of James, cross-examination of Arlene, direct examination of Phillip, direct examination of Randall, and the closing statement. In addition, four students are needed as witnesses and twelve students can serve as the jury. Such a division of tasks directly involves approximately two dozen students, and others can be used as bailiff, court reporter, judge, and as possible replacements for participants, especially witnesses, in the event of an unexpected absence. Still other students may serve as radio, television or newspaper reporters who observe the trial and then "file" their reports by making a presentation to the class in the form of an article or editorial following the trial.

d) Students work in the above mentioned task-groups in class for one or more class periods, with the assistance of the teacher and an attorney or law student. During this preparation time, jurors might explore the role of the jury, the historical development of the jury system, and other topics related to their part in the mock trial. Student attorneys should use this time to outline the opening statements they will make. Because these statements focus the attention of the jury on the evidence which will be presented, it will be important for these students to work in close cooperation with all attorneys and witnesses for their side. In the opening statement for the defense, for example, the attorney might begin by saying:

> "Ladies and gentlemen of the jury, today we will present evidence which will show a man is being charged with assault for his activities in connection with an incident in which any one of you would have reacted the same, reasonable way he did. Our witnesses will testify that the defendant, Randall, approached an old friend at a night club and politely asked her to dance, but that he had the misfortune of encountering the woman's date, who had, on that night, had too much to drink. When that man unreasonably confronted and began attacking the defendant, we will show that my client responded reasonably and in his own self-defense . . . as any one of you would have done."

This opening statement would then continue to explain the evidence to be presented in support of the defendant. The prosecution statement, of course, will outline the case against the defendant.

Student attorneys should develop questions to ask their own witnesses and rehearse their direct examination with these witnesses. In *State v. Randall*, the prosecutors should carefully develop their questions with both James and Arlene (as the defense attorneys should do with Phillip and Randall). James and Arlene, both thoroughly familiar with their witness statements, should practice answering the prosecutor's questions with testimony not inconsistent with their witness statements. (These statements, which may be considered to be sworn-to pretrial depositions or affidavits, can be used by the other side to impeach a witness who testifies inconsistently with the statement.) For example, after James takes the stand, the prosecutor could begin with a line of questions such as:

"Would you please state your name and address?";

"James, please tell us where you were on the night of ?

"Can you tell us what happened at

the night club on that night?"

On direct examination, questions should not be leading, that is they should not have the answer included as part of the question (e.g., "Isn't it true that you were at the Blue Bird Cafe on the night in question?" is a leading question). Leading questions may, however, be used in cross-examining a witness in order to impeach the witnesses' credibility in the testimony (e.g., a defense attorney could ask James: "Isn't it true that you hit Randall because he was asking Arlene to dance?")

While some attorney-witness groups are constructing the questions and testimony for direct examination, other attorneys should be thinking about how they will cross-examine the witnesses for the other side. As mentioned, the purpose of cross-examination is to make the other side's witnesses seem less believable in the eyes of those determining the facts of the case (i.e., the jurors in a jury trial or the judge if no jury is used). Leading questions, sometimes requiring only a yes or no answer, are permitted. Frequently it is wise to ask relatively few questions on cross-examination so that the witness will not have an opportunity to reemphasize strong points to the jury. In cross-examining Phillip, the waiter, the prosecution might try to suggest to the jury his inability to see and hear clearly the events he has testified to in favor of the defendant. Questions along the following lines might be employed:

"Is the night club a place for people to relax, listen to music and dance?"

"Are the lights there kept low in order to encourage an intimate atmosphere?"

"On the night in question, weren't you also busy waiting on other tables?"

"Then isn't it true that because of the darkness, the music and your other activities, you could not be absolutely certain of what you just testified to seeing and hearing at James' table?"

The closing arguments are rather challenging since they must be flexible presentations, reviewing not only the evidence presented for one's side but also underscoring weaknesses and inconsistencies in the other side's case which arise out of the trial proceedings. The prosecution's closing statement in the *Randall* case might include some of the following language:

> "Ladies and gentlemen of the jury, you have listened patiently and carefully to the evidence which each side has presented in this trial. You have heard testimony which proved beyond a reasonable doubt that on the night in question, Randall did approach James and Arlene, harassing them for no good reason, and that the defendant did, in fact, physically assault James. The defense has only been able to present testimony from the defendant, whom the evidence suggests was actually drunk at the time of the assault, and Phillip, a waiter at the club who was not only a friend of the defendant but who also claims to have seen and heard what transpired in a room which was noisy and dark while he was located in another part of the club."

By the way, don't be alarmed if your students aren't this proficient. Students will develop questioning and oral advocacy skills through repeated use of the exercise.

e) Once all preparation has been completed, convert the classroom into a courtroom by rearranging desks as shown in the diagram. It is also helpful to have long tables for each attorney team to work from; the teacher's desk can serve as the judge's bench.

f) Conduct the trial with a teacher, students or resource person (perhaps a law student, lawyer or actual judge) as a judge. A student jury may be used. The role of the jury is often minimized in television trials. Students should understand that the jury determines the facts in a case, primarily through their acceptance or rejection of the testimony offered by various witnesses for both sides. The judge deals with questions of law. For example, in *State v. Randall* the judge will explain assault and self-defense, the two legal issues involved in the case, to the jurors.

Don't interrupt the trial to point out errors. If a witness comes up with an off-the-wall comment, or if a student playing an attorney fails to raise an obvious objection, let it go. Wait until the debriefing, when you'll be able to put the whole exercise in perspective.

For educational purposes, it may be best to have the jury deliberate in front of the entire class, instead of retiring to a private place as occurs in actual trials. This will enable students to see first-hand the process of decision making, enabling them to learn what evidence was persuasive and why. Since the student jury may be representative of the community, their deliberations should provide a good analogy to real jury deliberations. Specific jury instructions for the *Randall* case have been included in the materials in the box. Simplified steps in the trial have been included to assist teachers in organizing the trial process.

g) Set aside sufficient time for debriefing what happened in the trial. The debriefing is the most important part of the mock trial exercise. It should bring the experience into focus, relating the mock trial to the actors and processes of the American court system.

Students should review the issues of the trial, the strengths and shortcomings of each party's case, and the broader questions about our trial system. Does our judicial system assure a fair trial for the accused? Are some parts of the trial more important than others? Would you trust a jury of your peers to determine your guilt or innocence? Students should also explore their reactions to playing attorneys, witnesses, jurors and the judge. What roles do each play in the trial process?

If a resource person has participated in the mock trial, the debriefing is an excellent way to make the most of his or her experience and insights. Since the mock trial is a common frame of reference, the resource person has a natural vehicle for expressing ideas and observations, and students should be better able to grasp the points that are being discussed.

Mock Trial Competitions

A variety of spin-offs have come from mock trials. One of the most rewarding is the area-wide mock trial competition. These competitions are like single elimination basketball tournaments. That is, teams from different schools compete against each other, with the losers eliminated and the winners proceeding to the next round. (Of course, the same model could be used for competitions between classes within a school.) The Street Law project has been conducting city-wide mock trials in Washington since 1972, and we'd be glad to send you information on how you can set up your own competition.

These competitions are real attention-grabbers, which build students' interest, involve volunteers in a creative way, and provide excellent public relations and publicity for your program. The competitions need not be expensive. They can usually take advantage of time donated by lawyers and judges, and judges or law schools can often make courtrooms available at no cost.

Mock Trials for Elementary Students

While mock trials have probably found greatest acceptance in secondary school classrooms, an adaptation of the technique for elementary school students has been developed by Arlene Gallagher and Elliot Hartstein of the Law in American Society Foundation in Chicago. The "Pro Se Court" simulation provides for roleplaying coupled with decision-making activities in a simplified procedural context which can serve as a stepping stone for later mock trials.

Somewhat more elaborate materials in this area have been developed by Margaret Caylor of the Law in a Changing Society Project in Dallas. That teaching unit, "The Mock Trial," is actually a kit for upper elementary teachers which contains everything from a judge's robe and gavel to roleplaying situation sheets for students. This kit uses historical situations such as those involving Roger Williams and Anne Hutchinson as well as staged classroom incidents which can quickly be converted into trial exercises. This kit has been widely used by teachers across the state of Texas and by some in Oklahoma. (See bibliography for more information on these and other materials.)

There is one point to remember that applies to mock trials at any level. Don't forget that the objective is not the precise replication of an actual trial but a learning experience for you, your students, and even for any resource persons who may be helping out. The emphasis shouldn't be on perfection, but on a nonthreatening exercise with plenty of time for debriefing, enabling the class to go over key points in the trial and better understand the whole experience. To put it another way, don't forget that mock trials should be both fun and a learning experience.

For additional information and assistance on mock trials, mock trial competitions, and materials, write or call the National Street Law Institute, 605 G Street, N.W., Washington, D.C. 20001 202-624-8217.

Mock Trial Materials

There are a number of books and games that can help you conduct successful mock trials:

ABA Special Committee on Youth Education for Citizenship, *Gaming: An Annotated Catalogue of Law-Related Games and Simulations*, 1975. This catalogue describes a number of simulation games relating to trials, including information on cost and addresses for ordering. Teacher Resource. The cost is $1.00; order from YEFC, American Bar Association, 1155 East 60th Street, Chicago, Illinois 60637.

Todd Clark, et al., *Kids in Crisis*, 1975. This simulation game focuses on how a juvenile court makes its sentencing decisions in delinquency, neglect and child abuse cases. Secondary. The cost for a class set is $32.50; order from Social Studies School Service, 10,000 Culver Blvd., Culver City, California 90230.

Arlene Gallagher and Elliot Hartstein, "Pro Se Court: A Simulation Game," 1973. This game, included in a special children's issue of the *Law in American Society Journal*, couples role-playing and decision making in the legal context of small claims court. Elementary. The cost is $2.75. Order the May, 1973 issue of *Law in American Society Journal* (Volume II, Number II) from Law in American Society Foundation, 33 North LaSalle Street, Suite 1700, Chicago, Illinois 60602.

Ronald A. Gerlach and Lynne W. Lamprecht, *Teaching About the Law*, 1975. Chapter 9 of this methods text contains a full discussion of mock trials and moot courts, as well as samples of each exercise. Teacher Resource. The cost is $9.95; order from W.H. Anderson Co., 646 Main Street, Cincinnati, Ohio 45201.

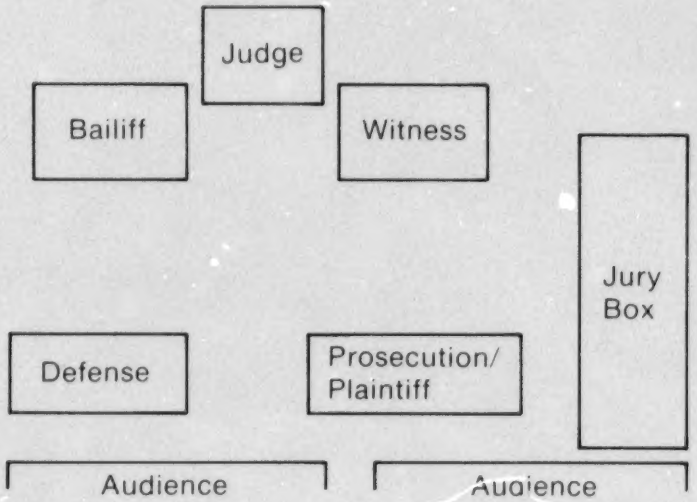
Ethan Katsh, et al., *Plea Bargaining: A Game of Criminal Justice*, 1974. A game designed to help students experience the pressure of overcrowded city dockets and learn about the justice and injustice of plea bargaining. Secondary. The cost is $17.50 for 18 student kits, $25.00 for 35 student kits; order from Simile II, 1150 Silverado, P.O. Box 1023, LaJolla, California 82037.

Law in a Changing Society, *Upper Elementary Program*, 1978. This comprehensive program for upper elementary students contains many activities and materials relating to jury selection and mock trials. For information on its cost, please contact Jim Miller, Education Service Center 13, 7703 N. Lamar, Austin, Texas 78752.

National Street Law Institute, *Street Law, A Course in Practical Law*, 1975. The teacher's manual to this text includes directions on how to do mock trials and contains sample trials with witness statements in seven areas of law. Secondary. The cost is $5.95 a copy for one to nine copies, $5.50 apiece for 10 to 99 copies; order from West Publishing Co., 170 Old Country Road, Mineola, New York 11501.

Mock Trial Outline: *State v. Randall*

Layout of Classroom



Participants

judge (could be a visitor to class with legal experience)
4-6 prosecutors
4-6 defense attorneys
2 witnesses for the prosecution
2 witnesses for the defense
1 bailiff
jury composed of twelve persons, one of whom should be named jury foreman; alternates may also be designated.

Simplified Steps in a Trial

1. *Calling of Case by Bailiff:* "All rise. The Court of is now in session. Honorable Judge presiding."
2. *Opening Statement:* First the prosecutor (criminal cases) or plaintiff's attorney (civil cases), then the defendant's attorney, explain what their evidence will be and what they will try to prove.
3. *Prosecution's or Plaintiff's Case:* Witnesses are called to testify (direct examination) and other physical evidence is introduced. Each witness called is cross-examined (questioned so as to break down the story or be discredited) by the defense.
4. *Defendant's Case:* Same as the third step except that defense calls witnesses for direct examination, cross-examination by prosecution/plaintiff.
5. *Closing Statement:* An attorney for each side reviews the evidence presented and asks for a decision in his/her favor.
6. *Jury Instruction* (Jury Trials Only): The judge explains to the jury appropriate rules of law which it is to consider in weighing the evidence. As a general rule, the prosecution (or the plaintiff in a civil case) must meet the burden of proof in order to prevail. In a criminal case this burden is very high. In order that innocent persons do not lose their freedom, the prosecution must set out such a convicing case against the defendant that the jurors believe "beyond a reasonable doubt" that the defendant is guilty. In a civil case, plaintiff has burden of proving his/her case by "a preponderance of the evidence." In most states the entire jury has to be convinced, though a recent Supreme Court case permits 9-3 verdicts in state non-capital criminal cases. Understanding that a unanimous (or 9-3) decision by the jury is required will help students understand why jury deliberations are sometimes so lengthy.
7. *Deliberation and Decision:* In making a decision, the judge or jury considers the evidence presented and decides which witnesses were most credible.
8. *Sentencing* (Criminal Trials Only): After a defendant is found guilty, a study of the defendant's background is usually prepared by a probation officer, who then makes a sentencing recommendation. The judge pronounces sentence.

Mock Trial Materials, cont.

New York State Bar Association Committee on Citizenship Education. *Mock Trial Manual*, 1975. A booklet designed to help secondary school teachers prepare and present mock trials for civil cases, criminal cases, and appeals. It includes one sample script and follow-up questions. Teacher Resource. Single copies are free to New York residents; order from the New York State Bar Association, One Elk Street, Albany, N.Y. 12207.

Robert H. Ratcliffe (ed.), *Great Cases of the Supreme Court* and *Vital Issues of the Constitution* (both 1975). Each of these books contains a mock trial and a trial script. *Great Cases* is intended for seventh and eighth graders, *Vital Issues* for high school students. The faculty editions of *Great Cases* and *Vital Issues* cost $2.43 apiece; the student edition of *Great Cases* is $3.24, the student edition of *Vital Issues* $3.60. Order from Houghton Mifflin Company, Dept. M., One Beacon Street, Boston, Massachusetts 02107.

Richard Weintraub, et al., *The Jury Game*, 1974. In this game, students play roles of justice system personnel and citizens involved in the pretrial jury selection process. Secondary. The cost is $15.00 for a class set ($22.50 for sets containing eight-page players' booklets); order from Social Studies School Service, 10,000 Culver Blvd., Culver City, California 90230.

Facts

James and Arlene go to a night club to have a drink. Randall, who has been drinking, comes up to their table and, saying he knows Arlene, tries to talk to her. James gets angry and asks Randall to leave. An argument takes place and a fight then occurs. The police are called and Randall is arrested for assault on James. Randall claims James caused the fight and he was only defending himself.

Witnesses and Their Statements

For the Prosecution

1. James
2. Arlene

For the Defense

1. Phillip, a waiter in the nightclub
2. Randall

James: "I was just sitting in the place with Arlene, listening to the music, when this guy came up and started bothering her. I asked her if she knew him and she said 'No.' So I told him to split. The man was blind drunk, and he kept bothering my girl. So I stood up and told him to leave before I called the manager on him. About that time he squared off on me and when I turned to walk away he hit me."

Arlene: "I was with my boyfriend, James, at this club when an old friend of mine, Randall, came over to our table. Randall had been drinking, and he grabbed my arm and told me to dance with him. James asked me if I knew him, and I said 'No' because James is very jealous. Then James told Randall to leave before some trouble got started. Randall didn't leave, and James stood up to argue with him. The next thing I knew, they were fighting."

Phillip: "This guy was sitting with this girl when Randall went over to them. I know Randall because he plays in a band here occasionally. Randall had only two drinks. I know because I was waiting on his table. Randall motioned to the girl to dance, and then he held her arm to help her up. The guy she was with got mad and started yelling. Randall smiled and told him to be cool. The guy jumped up and grabbed Randall. Randall hit him back; they really went to it. After that, the cops came."

Randall: "I was at this club, walking around, checking the place out. I saw Arlene. I had been going with her for two years, but I hadn't heard from her for a couple of months. I went over to ask her how she was doing. I had had a couple of drinks, but I wasn't even a little high. I asked her to dance, and the guy with her looked at me funny. I know Arlene well, and I knew she wanted to dance with me, so I took her by the arm. Then this guy sitting with her started to confront me. I told him I didn't want any trouble. Then he jumped up and before I knew it, he grabbed me and hit me."

Jury Instructions

(1) Defining Assault and Battery. Generally, the law holds that assault is an unlawful threat to injure another person, coupled with an ability to do so and a display of force sufficient to make the victim fear immediate harm. ("Unlawful" means either contrary to law or without legal justification.) Battery is an unlawful use of force on the physical person of another. Thus the least touching of a person may constitute a battery.

(2) Defining Self-Defense. The law recognizes the right of an individual to defend himself, and he need not wait to do so at his peril. That is, he need not delay his defense until the alleged aggressor has made the first move. The test is reasonableness. If a person has a reasonable fear for his own safety, he may take reasonable—not excessive—steps to defend himself.

Jury Deliberation

Once instructed, the jury deliberates the verdict. They must decide from the evidence whether the prosecution has shown Randall to be guilty beyond a reasonable doubt. The jury foreman writes the verdict on a slip of paper and hands it to the judge who reads it in "open court."

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Appendix B

The Case for the Case Study Approach

by Isidore Starr

Things haven't changed much since Alexis de Tocqueville wrote, "Scarcely any political question arises in the United States which is not resolved, sooner or later, into a judicial question."

Even as early as the mid 1800's, de Toqueville was able to observe one of the most salient characteristics of the American people, our habit of "constitutionalizing" our conflicts, of resolving them through judicial interpretation of the Constitution. With the passage of time, de Toqueville's observation has become truer than ever. Every great issue of our time, from A (abortion) to Z (zoning), comes before our courts, and landmark cases often offer an illuminating picture of the clash of values and the resolution of difficult issues.

Important case decisions are readily accessible and can easily be adapted to excellent classroom exercises, since the opinions contain everything you need to present an issue fully. Case studies also offer an introduction to ways of thinking. To observe well-trained minds grappling with some of the perplexing issues of the day can be an object lesson in decision-making and conflict resolution.

Below is a case that may well be of special interest to teachers and students. *Tinker v. Des Moines Independent Community School District*, 399 U.S. 503 (1969). In recent years the Supreme Court has entered the schoolhouse to decide matters of concern to school officials and to students and their parents. Among these confrontations are the issues of corporal punishment,' suspension and expulsion of students, and freedom of expression. *Tinker* is the most important ruling of the Court in this latter area.

The Facts

A good way to begin is by presenting students the facts of the case. The facts are sometimes set forth clearly in the text of the court's ruling and can be reproduced easily. More often, however, the instructor will have to edit the facts to meet the maturity level and the reading skills of the students. The following statement of facts is an edited version and includes the facts as presented in the majority and dissenting opinions.

In December, 1965, a group of adults and students decided to publicize their opposition to the Vietnam conflict by wearing black armbands during the holiday season and by fasting December 16 and New Year's Eve. Several of the students present had engaged in similar activities in the past, and they decided to participate in this activity.

The principals of the Des Moines schools heard about the plan and, on December 14, adopted a policy that forbade the wearing of an armband to school. Students who refused to remove such armbands would be suspended until they complied.

On December 16, several students who knew about the regulation wore armbands to school. Paul Tinker, 8 years old and in the second grade, Hope Tinker, 11 years old and in the fifth grade, Mary Beth Tinker, 13 years old and in junior high school, and Christopher Eckhardt, a 16-year old high school student. The following day, John Tinker, a 15-year old high school student, wore his armband to school.

The students were suspended and were told not to return to school unless they removed their armbands. They stayed away from school until after New Year's Day, when the planned period for wearing the armbands had expired.

Several incidents took place on the day the students wore their bands. There were comments and warnings by other students, some poking fun at them, and an older football player warned other students they had better let the protestors alone. A math teacher had his lesson practically "wrecked" by disputes with Beth Tinker.

The suspended students, through their fathers, filed a complaint with the United States District Court, asking for an injunction ordering the school officials not to punish them. In addition, they sought nominal damages—a small or token sum of money, usually $1.00, to show that legal injury has been suffered.

The Issues

With the facts in the hands of the students, the next step is to ask them to identify the basic issues as perceived by the opposing parties. One way to do this is to organize the students into small groups in which they place themselves in the position of the students or the school administrators.

In this case, the facts suggest a wide variety of issues. Students new to law studies and the case study method will probably perceive these

issues in moral or practical terms, is it fair that students be deprived of their opportunity to express their political opinion? Will wearing the armbands disrupt the learning process? What about the responsibility of the school to maintain order?

By examining the Constitution and Bill of Rights to determine which provisions are relevant, however, students can begin to translate these general concerns into legal/constitutional issues. Does the First and Fourteenth Amendment protection of free speech apply to students in the school? If it does, is wearing a black armband considered speech which is protected by these amendments? Is the free speech protection absolute, or can it be limited in certain circumstances? If so, what are those circumstances, and do they apply here?

The Arguments

Once the issues have been identified, have the students convert these into persuasive arguments for presentation to the Court. This exercise should help students see new dimensions to the issues and gain further insight into how these issues can be framed under our Constitution. The following summary of the actual arguments may provide a model.

In a criminal case, proof is necessary beyond a reasonable doubt, but since this was a civil proceeding, the attorneys for the Tinker children only had to prove by a fair preponderance of the evidence that their side was right.

It was argued, in the first place, that the wearing of armbands was the equivalent of speech and was thus protected by the First and Fourteenth Amendments. The First Amendment prohibits Congress from abridging freedom of speech, and the Supreme Court has expanded this prohibition to states under the Due Process Clause of the Fourteenth Amendment ("No State shall . . . deprive any person of life, liberty, or property, without due process of law . . .") by interpreting "liberty" to encompass the fundamental rights guaranteed by the First Amendment.

The second line of argument was that the action of the school authorities was capricious, arbitrary, and unreasonable because it simply singled out one form of expression—the black armband — rather than prohibiting the wearing of all controversial insignia. Furthermore, the administrators had permitted the wearing of political campaign buttons, and even the Iron Cross, in the schools.

The action of the school authorities would have been understandable if they could show that trouble might ensue in the school. However, the school system did not have a history of disruptions and, in any event, a few armbands in a school system of 18,000 students, the plaintiffs argued, did not warrant the action of the school administrators.

The attorneys for the School District responded with equally effective arguments. Amendment X of the Constitution vests the states with power over the educational system. Acting in the name of the state and with the powers vested in them, school authorities have the responsibility to take measures to protect the health, welfare, and safety of the students under their supervision.

The school regulation against black armbands was necessary to preserve discipline in the school. The Vietnam War was a divisive conflict marked by public protest meetings, draft card burnings, and a march on Washington. A former student of one of the high schools had been killed in Vietnam and some of his friends might have reacted strongly to the wearers of armbands. Students at one of the schools had been heard to say that if black armbands were permitted, they would wear armbands of another color. The situation seemed rife with rumors of trouble and the school administrators were best qualified to judge the situation. The regulation against the black armbands had been necessary to maintain discipline in the school and to prevent any interference with learning.

The Decision

The United States District Court, the lowest federal court, dismissed the complaint and ruled in favor of the school authorities. The case was carried to the United States Court of Appeals, where the judges were divided equally on the issue. This meant that the lower court decision was affirmed. The plaintiffs then carried their case to the Supreme Court of the United States. The decision was 7 to 2. For whom?

At this point the students can be told how the case was decided, but this means that they will know the answer without additional thinking. To continue the suspense, present the class with excerpts from the majority and dissenting opinions, without identifying which they are. Students then have the opportunity to choose the line of reasoning which appeals to their minds or feelings. This gives the instructor an opportunity to examine with students cogency of reasoning, tangential commentary, the nature of judicial decision-making, and the personal philosophies and emotional reactions of the judges.

The Opinions

Justice Fortas wrote the opinion for the majority. The following excerpts indicate how he approached the issues.

> . . .the wearing of armbands in the circumstances of this case . . . was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment . . . First Amendment rights, in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakeable holding of this Court for almost 50 years.
>
> In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.
>
> . . . Certainly where there is no finding and no showing that

engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained . . . the record fails to yield evidence that the school authorities had reason to anticipte that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students . . . . Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible

Justices Stewart and White wrote concurring opinions. Justice Stewart did not agree that the First Amendment rights to students are "coextensive" with those of adults, but he nonetheless supported the majority decision. Justice White also supported the majority but pointed out that there is still a distinction "between communicating by words and communicating by acts or conduct." Exposing students to concurring opinions such as these can suggest new perspectives on the majority opinion and open up new topics for discussion.

Justice Black's sweeping dissenting opinion was surprising to those who associated him with some of the landmark freedom of expression rulings of the past. The following excerpts convey the flavor of his thoughts and feelings on the subject of school discipline.

While I have always believed that under the First and Fourteenth Amendment neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases . . . Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases.

(And) if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary.

. . . The original idea of schools, which I do not believe is yet abandoned as worthless or out of date, was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders . . . One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders . . .

This case, therefore, wholly without constitutional reasons in my judgment, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students. I, for one, am not fully persuaded that school pupils are wise enough, even with this Court's expert help from Washington, to run the 23,300 public school systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students. I dissent.

Justice Harlan also dissented. His argument was based on the proposition that "school officials should be accorded the widest authority in maintaining discipline and good order in their institutions." Therefore, in cases of this type the burden of proof rests on the complainants to show that the board's action was motivated by other than "legitimate school concerns." There was no proof here that the school officials intended to prohibit the expression of an unpopular point of view, while at the same time permitting the expression of the majority opinion.

Critique

The *Tinker* case is the law of the land, but that does not mean that it is above criticism. The case study method should include an opportunity to criticize the opinions of the Court on the measuring rod of desirable public policy. This stage allows students to take the concerns that they discovered in the issues and arguments phase and apply them to the actual decision.

Students should be encouraged to react freely to the interplay of the Fortas-Black confrontation. For example, Justices Fortas and Black express very different conceptions of education. Which one's views are more desirable for turning out good citizens? Is Fortas's opinion realistic and desirable, or will it place burdens on school administrators? Does Black's opinion reflect what is truly going on in schools? What consequences would it have for teaching and learning?

Application

An essential part of the case study method is speculating on how a constitutional principle would be applied in other cases. Other fact situations permit students to deepen their understanding of the issues and more closely analyze the conflicting values. How would they decide them in the light of the Court's general standard, established in *Tinker*, that school officials can restrict freedom of speech only if they can reasonably predict that the speech will materially and substantially disrupt discipline in the school. Consider the following:

Case I. A student named Guzick came to his high school wearing a button announcing a Vietnam moratorium demonstration and carrying pamphlets urging students to participate in that event. The school has a rule, oral but not written, against the wearing of insignia not related to school activities. This forty-year-old rule had resulted from rivalries of fraternities and sororities. The principal ordered Guzick to remove the button. He refused and was suspended. The school had once been all-white, but it was now 30% white and 70% black. Racial tensions had been evoked in the past by the wearing of such buttons as "White is Right," "Black Power," and "Happy Easter, Dr. King." On a number of

occasions, fights had occurred. Does the *Tinker* case rule apply here? What are the similarities and differences between the two cases?

Case II. Dallas school authorities knew that some students in the schools would wear black armbands to show their opposition to the war in Vietnam during the Vietnam Moratorium on October 15, 1969. Anticipating disruptions in the schools, the superintendent of schools prohibited the wearing of black armbands on that day. A number of students wearing such armbands were suspended. Those who wore white armbands were not suspended. On previous occasions students had worn peace symbols and had not been punished. Does the *Tinker* rule apply here? What differences and similarities do you see?

Case III. Charles James, an English teacher in the eleventh grade of an upstate New York high school, wore a black armband to class on November 14, 1969 to show his sympathy with the Vietnam Moratorium. When his principal asked him to remove it, he refused, stating that as a Quaker, he was opposed to killing. James was suspended on the ground that his act was political and his conduct was unethical. James was later reinstated, but after once again wearing the armband, was eventually fired. Upon losing an appeal to the state commissioner of education, he sued to be reinstated in his job, asking for $25,000 in damages. Would the *Tinker* rule apply here?

Here's what each court decided:

Case I. In *Guzick v. Debrus*, 431 F. 2d 594 (1970), the United States Court of Appeals upheld the school authorities. The existence of a long-standing rule against the wearing of non-school related buttons or insignia, the racial composition of the school, the atmosphere of tension, and the racial confrontations of the past justified the actions of the school officials. As for the issue of freedom of expression, the Court said that "America's classrooms will lose their usefulness as places in which to educate our young people if pupils come to school wearing the badges of their respective disagreements and provoke confrontations with their fellows and their teachers." The Supreme Court refused to review this case, letting the decision stand against Guzick.

Case II. In *Butts v. Dallas Independent School District*, 436 F. 2d 728 (1971), the United States Court of Appeals overruled the trial court's decision in favor of the school authorities. The appeals court concluded that the regulation "was improvised . . . for the occasion." Although disruption was a possibility, this did not justify suspending "the exercise of what we are taught by *Tinker* is a constitutional right." In the words of the court, " . . . we believe that the Supreme Court has declared a constitutional right which school authorities must nurture and protect, not extinguish, unless they find the circumstances allow them no practical alternative."

Case III. James lost in the United States District Court, but won in the United States Court of Appeals. *James v. Board of Education*, 461 F. 2d 566 (1972). The District Court decided that James had ignored the New York State Education Department ruling relating to neutrality and objectivity in presenting controversial issues, such as the Vietnam Moratorium. The Appeals Court, however, decided unanimously in favor of James on the basis of the *Tinker* case. They concluded that James had exercised his right to freedom of speech—symbolic speech—in a school atmosphere where there had been no disruptions. The court pointed out that school officials had permitted other signs such as "Peace with Honor," indicating that the school board's regulation against political activity in the classroom may be no more than "the fulcrum to censor only that expression with which it disagrees." The Supreme Court refused to review, thus upholding the decision in favor of James.

Alternative Approaches

There are, of course, other approaches to the case study method. An entire case, properly edited for maturity level and reading skills, can be distributed with instructions that the students discover the facts, arguments, issues, and the opinion or opinions of the judges. An alternative method is to assign to small groups the task of dissecting the case.

On a more sophisticated level, where there are majority and dissenting opinions, the students can be presented with two sets of facts drawn from the opinions. Their assignment is to note the differences in tone and detail of the statements. Then, two sets of opinions are handed out, without disclosing which are the majority and dissenting opinions. The assignment at this point is to match the facts with the opinions.

Films and film strips can be easily used in the case study format. Stopping the media at the proper point to examine the facts and the issues sets the stage for evoking the opposing arguments from the students before resuming the film. Even better, students can be asked to role play appropriate parties to the case and even to act as judge and jurors prior to the disclosure of the decision.

Creative intelligence and imagination can do wonders with the case study method. It adds a dimension to learning, provided the instructor does not fall into the routine of presenting "one damned case after another." Rigid routines can be the bane of a student's life in the classroom—and a teacher's, too.

Materials on the Bill of Rights

Many excellent materials provide you with information on important cases which have arisen under the Bill of Rights.

Print

Isidore Starr, *The Supreme Court and Contemporary Issues* (1969). This paperback discusses Supreme Court decisions through excerpts from important cases, providing case backgrounds and decisions, and noting the significance of decisions. The book costs $4.00. Order from Encyclopedia Britannica Educational Corporation, Customer Service, 10th floor, 425 N. Michigan, Chicago, Ill. 60611.

William Cohen, Murray Schwartz, and DeAnne Sobul, *The Bill of Rights, A Source Book* (1976). This paperback source book on constitutional law covers judicial review, freedom of religion, criminal due process, equal protection of the law, the Fourteenth Amendment and federalism. The cost is $4.96, $4.40 for the teacher's handbook; schools get a 25% discount on both books. Address orders to Glencoe Publishing Co., Front and Brown Sts., Riverside, N.J. 08075.

Donald Parker, Robert and Karen O'Neil, and Nicholas Econopouly, *Civil Liberties Today: Case Studies and the Law* (1974). This paperback presents the legal bases for the rights of the accused, equal opportunity under law, property rights, and freedom of religion, speech, press, and assembly. The cost is $4.32, $3.24 for school people. Address orders to Houghton Mifflin Co., Dept. M, One Beacon Street, Boston, Mass. 02107.

Franklyn S. Haiman (ed.), *To Protect These Rights* (1976). This series of books, published in conjunction with the American Civil Liberties Union, includes six books: *Due Process of Law, Freedom of Speech, Racial Equality, Religious Freedom, Rights of Privacy,* and *Woman and the Law.* Each book includes discussions of and excerpts from dozens of cases which show the evolution of constitutionally protected rights. Each book costs $5.75, $4.31 in classroom sets; the complete series is available for $29.50. Address orders to National Textbook Co., 8259 Niles Center Road, Skokie, Ill. 60076.

Milton R. Konvitz (ed.), *Bill of Rights Reader: Leading Constitutional Cases* (5th rev. ed., 1973). This compendium of important Bill of Rights cases is another good teacher resource. It contains explanatory essays and excerpts from trials and decisions. The cost is $19.50, address orders to Cornell University Press, 124 Roberts Place, Ithaca, N.Y. 14850.

Films

Our Living Bill of Rights Series (1967-69). This series of six color, sound 16mm. films, some with teacher's guides, explores basic Bill of Rights concepts by recreating actual cases and incidents and exploring the various issues presented. The films, which often include individuals who were actually involved in the cases, are open-ended and are designed to encourage discussion. They vary in length from 20 to 35 minutes. The first figure following the title indicates their purchase price, the second the short-time rental fee. *Freedom to Speak: People of New York v. Irving Feiner* ($325, $17); *Justice Under Law: The Gideon Case* ($290, $17); *Free Press v. Fair Trial by Jury: The Sheppard Case* ($360, $21); *Equality Under Law: The California Fair Housing Cases* ($255, $14); *Equality Under Law: The Lost Generation of Prince Edward County* ($245, $14); *Liberty Under Law—the Schempp Case: Bible Reading in Public Schools* ($460, $24). The films may be ordered from Encyclopaedia Britannica Films, 425 N. Michigan, Chicago, Ill. 60611.

Bill of Rights in Action (1969-1976). This series of twelve color, sound 16mm. films, each about 20 minutes long, explores key Bill of Rights issues. In each case, the incident is presented and arguments on each side made. The judgment is left to the audience. The first figure following the film's title is its sale price, the second its rental fee. *Capital Punishment* ($315, $25); *De Facto Segregation* ($320, $18); *Equal Opportunity* ($295, $18); *Freedom of the Press* ($310, $18); *Freedom of Religion* ($285, $18); *Freedom of Speech* ($285, $18); *Juvenile Law* ($335, $22); *Privilege Against Self-Incrimination* ($335, $18); *Trial* ($295, $18); *Women's Rights* ($330, $22); *Due Process of Law* ($325, $18). Order from BFA Educational Media, 2211 Michigan Avenue, P.O. Box 1795, Santa Monica, Calif. 90406.

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